



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2010

Mr. Augustin Rivera, Jr.
Dunn, Weathered, Coffey, Rivera & Kasperitis, P.C.
611 South Upper Broadway
Corpus Christi, Texas 78401

OR2010-14130

Dear Mr. Rivera:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393810.

The Del Mar College District (the "college"), which you represent, received a request for (1) the name; (2) postal or residential address; (3) on-campus mailing address; (4) telephone number; (5) date of birth and/or age; (6) years of service with the college; (7) information regarding participation in the Texas Optional Retirement Program or the Teacher Retirement System (collectively, the "retirement system"); (8) annual salary or hourly rate; (9) position or job title; and (10) employees' department or campus for all employees of the college. You state the college will release information responsive to items (1), (3), (8), (9), and (10). We understand the college will also release information responsive to item (6). You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses confidentiality provisions such as section 825.507 of the Government Code, which provides in pertinent part:

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(a) Records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section[.]

...

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

Id. § 825.507(a), (g). You contend the participation information the college seeks to withhold is confidential because it constitutes records of participants in the retirement system that are in the custody of the college acting in cooperation with or on behalf of the retirement system. Accordingly, we conclude the information at issue constitutes participant information made confidential by section 825.507. Thus, the college must withhold it under section 552.101 on that basis.

The college also argues its employees' dates of birth should be excepted from disclosure. Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. We note dates of birth are not highly intimate or embarrassing information. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.— 2008, pet. granted) ("We hold that date-of-birth information is not confidential[.]"); *see also* Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates not protected by privacy). Thus, the college has failed to demonstrate the applicability of common-law privacy to the information at issue. Consequently, the college may not withhold the employees' dates of birth under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus,

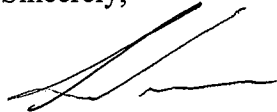
information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You seek to withhold information of employees who made timely elections to keep their information confidential. We note a post office box number is not a "home address" for purposes of section 552.117. *See id.*; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)). Accordingly, the postal addresses of employees may not be withheld under section 552.117(a)(1). Thus, the college must withhold the residential addresses and home telephone numbers of employees who timely elected to keep such information confidential prior to the receipt of the request under section 552.117(a)(1).

In summary, the college must withhold retirement system participation information under section 552.101 of the Government Code in conjunction with section 825.507 of the Government Code. The college must also withhold the residential addresses and home telephone numbers of employees who elected to keep this information confidential prior to the receipt of the request under section 552.117(a)(1). The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 393810

Enc. Submitted documents

c: Requestor
(w/o enclosures)